



[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 9**

**[NRC-2017-0144]**

**RIN 3150-AK06**

**Update to Fees for Search and Review of Agency Records by NRC Personnel**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to revise the fees charged for search and review of agency records by NRC personnel in response to certain Freedom of Information Act (FOIA) requests. These revisions are being made to ensure the NRC recovers direct costs of these activities, as required by the FOIA.

**DATES:** This direct final rule is effective **[INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, unless significant adverse comments are received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the *Federal Register*. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the *Federal Register*.

**ADDRESSES:** You may submit comments by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0144. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **E-mail comments to:** [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.

- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

- **Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Blaney, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6975; e-mail: Stephanie.Blaney@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

**TABLE OF CONTENTS:**

- I. Obtaining Information and Submitting Comments
- II. Rulemaking Procedure
- III. Background
- IV. Discussion of Changes
- V. Plain Writing
- VI. National Environmental Policy Act
- VII. Paperwork Reduction Act Statement
- VIII. Regulatory Flexibility Certification
- IX. Congressional Review Act

**I. Obtaining Information and Submitting Comments**

**A. Obtaining Information**

Please refer to Docket ID NRC-2017-0144 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0144.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the

search, select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

#### B. Submitting Comments

Please include Docket ID NRC-2017-0144 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is using the “direct final rule procedure” for this rule. The rule will become effective on **[INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

However, if the NRC receives significant adverse comments on this direct final rule by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the *Federal Register*. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

b) The comment raises an issue serious enough to warrant a substantive

response to clarify or complete the record; or

c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

3) The comment causes the NRC staff to make a change (other than editorial) to the rule.

For detailed instructions on filing comments, please see the ADDRESSES section of this document.

### **III. Background**

The FOIA provides that any person has a right to request and obtain access to federal agency records, except to the extent that any portions of those records are exempt from public disclosure. The FOIA also authorizes agencies to issue regulations specifying a schedule of fees for the processing of those requests (5 U.S.C. 552(a)(4)(A)). These fees are limited to reasonable standard charges for document search, duplication, and review, which may be charged depending on the purpose for which the records are sought and the class of requestor. The NRC's implementing FOIA regulations are found in part 9 of Title 10 of the *Code of Federal Regulations* (10 CFR). The NRC charges fees for the search and review of agency records in accordance with § 9.37, "Fees for search and review of agency records by NRC personnel," (although as specified in § 9.39, "Search and duplication provided without charge," the NRC will

search for records in some instances without charge, and requests for waivers or reduction of fees can be sought as specified in § 9.41, “Requests for waiver or reduction of fees”). Consistent with Office of Management and Budget (OMB) guidelines on fee schedules (52 FR 10012; March 27, 1987), the NRC recoups the direct costs of search and review by charging the hourly rates of the employees performing the task, plus 16 percent for fringe benefits. These OMB guidelines also provide that, where a homogenous or single class of personnel is used, agencies may establish reasonable average rates for the range of salary grades typically involved.

The NRC first established fees for search and review of agency records in 1987 (52 FR 49350; December 31, 1987), and last updated these fees in 2010 (75 FR 41368; July 16, 2010). Recently, as part of the agency’s biennial review of fees performed under the Chief Financial Officers Act of 1990 (31 U.S.C. 902(a)(8)), the NRC determined that the search and review rates for agency clerical staff and for professional/managerial staff needed to be increased in order to ensure the NRC continues to recover the direct costs of these activities.

Section 9.37 paragraph (a) will be changed from a GG-7/step 6 salary rate to a GG-9/step 7 salary rate; and paragraph (b) will be changed from a GG-13/step 6 salary rate to a GG-14/step 7 salary rate.

#### **IV. Discussion of Changes**

The FOIA authorizes agencies to issue regulations specifying a schedule of fees for processing requests from any person who requests access to federal agency records. Consistent with OMB fee schedule guidelines, the NRC recoups the costs

associated with the search and review of documents by charging the hourly rates of the employees performing the task, plus 16 percent for fringe benefits. The NRC last updated these fees in 2010. During the agency's biennial review of fees, it was determined that these fees needed to be increased in order to ensure the NRC recovers the direct costs of these activities.

## **V. Plain Writing**

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883).

## **VI. National Environmental Policy Act**

The NRC has determined that this direct final rule is the type of action described in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

## **VII. Paperwork Reduction Act Statement**

This direct final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject



to the requirements of the Paperwork Reduction Act of 1995.

### **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

## **VIII. Regulatory Flexibility Certification**

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. Search and review fees, which are borne by persons who voluntarily submit FOIA requests and represent only reasonable costs associated with the NRC's processing of such requests, are typically nominal. Additionally, as discussed above, the FOIA and NRC regulations provide means by which persons can request waiver or reduction of fees.

## **IX. Congressional Review Act**

This direct final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, OMB has not found it to be a major rule as defined in the Congressional Review Act.

## **List of Subjects in 10 CFR Part 9**

Administrative practice and procedure, Courts, Criminal penalties, Freedom of information, Government employees, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 9:

### **PART 9 — PUBLIC RECORDS**

1. The authority citation for part 9 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, sec. 161 (42 U.S.C. 2201); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note.  
Subpart A also issued under 31 U.S.C. 9701.  
Subpart B also issued under 5 U.S.C. 552a.  
Subpart C also issued under 5 U.S.C. 552b.

2. In § 9.37, revise paragraphs (a) and (b) to read as follows:

#### **§ 9.37 Fees for search and review of agency records by NRC personnel.**

\* \* \* \* \*

(a) Clerical search and review at a salary rate that is equivalent to a GG-9/step 7, plus 16 percent fringe benefits;

(b) Professional/managerial search and review at a salary rate that is equivalent to a GG-14/step 7, plus 16 percent fringe benefits; and

\* \* \* \* \*

Dated at Rockville, Maryland, this 3rd day of December, 2018.

For the Nuclear Regulatory Commission.

Margaret M. Doane  
Executive Director  
for Operations.

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